
**APPEALS BOARD
UTAH LABOR COMMISSION**

WENDY SUE GUDMUNDSON,

Petitioner,

vs.

**STATE OF UTAH DEPARTMENT OF
CORRECTIONS and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0469

Wendy Sue Gudmundson asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's denial of Ms. Gudmundson's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated, or alternatively, the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12, §34A-2-801(3) and §34A-3-102.

BACKGROUND AND ISSUE PRESENTED

On May 13, 2005, Ms. Gudmundson filed an application for hearing with the Commission's Adjudication Division claiming either workers' compensation benefits or occupational disease benefits from the Utah Department of Corrections and its insurance carrier, Workers Compensation Fund (referred to jointly as "Corrections" hereafter). In her application, Ms. Gudmundson alleged that she suffered "severe migraines, dehydration, and brain surgery" as a result of exposure to ozone while working at Corrections on December 17, 2004.

Judge George held an evidentiary hearing on Ms. Gudmundson's claim on December 20, 2005, and then referred the claim to a medical panel for evaluation. Before the medical panel issued its report, Judge George retired and Judge Hann was assigned to complete the adjudication of Ms. Gudmundson's claim. Judge Hann received the medical panel's report on March 1, 2006, and then issued her decision on October 2, 2006. This decision denied Ms. Gudmundson's claim on the grounds that her medical problems were not caused or aggravated by her work-related exposure to ozone during December 2004.

Ms. Gudmundson now requests Appeals Board review of Judge Hann's decision. In her motion for review, Ms. Gudmundson advances the theory that exposure to ozone at Corrections caused headaches, nausea and vomiting. These symptoms prompted her physician to perform a spinal tap in order to rule out meningitis. In the course of the spinal tap, a lumbar puncture occurred,

ORDER AFFIRMING ALJ'S DECISION
WENDY SUE GUDMUNDSON
PAGE 2 OF 3

which resulted in a "Chiari malformation" that necessitated the brain surgery which left Ms. Gudmundson with various impairments. Ms. Gudmundson asks the Appeals Board to reopen her claim to allow additional discovery and evidentiary proceedings.

DISCUSSION AND CONCLUSIONS OF LAW

Ms. Gudmundson supports her request for reopening her claim with what she terms "newly available, continuing, and mounting evidence . . . since the date of the hearing." This evidence consists of deposition testimony and copies of correspondence that relate to Corrections' troubleshooting of problems with the ozone generating equipment in its laundry facility during the period between December 2004 and June 2006. Ms. Gudmundson also relies on three articles from neurosurgery journals published during 1993, 1998 and 2005, respectively.

The Appeals Board has reviewed the deposition testimony and the correspondence proffered by Ms. Gudmundson. A substantial portion of this information could have been obtained and should have been presented during the evidentiary proceeding conducted by Judge George. Even later, Ms. Gudmundson could have asked Judge Hann to reopen the evidentiary hearing to consider such information. Ms. Gudmundson took neither of these actions. But more importantly, the material is of little probative value. At best, even when considered as a whole, it serves as little more than a basis for speculation.

Ms. Gudmundson also alleges factual errors by the medical panel relating to the extent and duration of Ms. Gudmundson's exposure to ozone. However, these alleged factual errors are also speculative---in essence, Ms. Gudmundson is suggesting that evidence which might be submitted in the future might undermine the evidence that was presented at the previous hearing. However, the existing facts, which are fully supported by evidence that was actually presented and accepted into the record, fully support the medical panel's opinion.

In summary, the Appeals Board concludes that the medical panel's report and, in turn, Judge Hann's decision, are supported by the evidence adduced during the evidentiary proceedings in this matter. The Appeals Board finds no sufficient reason to reopen the evidentiary proceeding. The Appeals Board therefore affirms Judge Hann's denial of Ms. Gudmundson's claim.

ORDER

The Appeals Board affirms Judge Hann's decision. It is so ordered.

Dated this 23rd day of April, 2007.

Colleen S. Colton, Chair

ORDER AFFIRMING ALJ'S DECISION
WENDY SUE GUDMUNDSON
PAGE 3 OF 3

Patricia S. Drawe

Joseph E. Hatch